

Update: Criminal Procedure Monograph 3—Misdemeanor Arraignments & Pleas (Revised Edition)

Part A—Commentary on Misdemeanor Arraignments

3.21 A Crime Victim's Rights Following an Arraignment

Victim impact statements.

On page 35, insert the following text before the paragraph beginning **“Restitution is required of any defendant. . .”**:

Effective January 1, 2005, 2004 PA 224 authorizes circuit and district courts to institute or adopt a drug treatment court. MCL 600.1062(1). Family divisions are also authorized to institute or adopt a drug treatment court for juveniles. MCL 600.1062(2). If an offender is admitted to a drug treatment court, adjudication of his or her crime may be deferred. MCL 600.1070(1)(a)–(c). A crime victim and others must be permitted to submit a written statement to the court prior to an offender's admission to drug treatment court. MCL 600.1068(4) provides:

“In addition to rights accorded a victim under the crime victim's rights act, 1985 PA 87, MCL 780.751 to 780.834, the drug treatment court must permit any victim of the offense or offenses of which the individual is charged, any victim of a prior offense of which that individual was convicted, and members of the community in which either the offenses were committed or in which the defendant resides to submit a written statement to the court regarding the advisability of admitting the individual into the drug treatment court.”

Part B—Commentary on Pleas

3.37 Pleas Under Advisement

Insert the following language on page 61 after the paragraph beginning “Deferred sentencing provisions”:

Effective January 1, 2005, 2004 PA 224 authorizes circuit and district courts to institute or adopt a drug treatment court. MCL 600.1062(1). Family divisions are also authorized to institute or adopt a drug treatment court for juveniles. MCL 600.1062(2). Criteria for admission, operating requirements, and procedural information about drug treatment courts appear in a new chapter of the revised judiciary act created by 2004 PA 224. See MCL 600.1060 *et seq.*

Effective January 1, 2005, 2004 PA 225 makes participation in a drug treatment court a term or condition that may be imposed on a defendant under §7411 deferral. MCL 333.7411(1).

♦ MCL 750.350a(4), Parental Kidnapping Act

Insert the following language after the first paragraph near the top of page 62:

- Effective January 1, 2005, 2004 PA 223 makes participation in a drug treatment court a term or condition that may be imposed on a defendant in deferral under MCL 750.350a. MCL 750.350a(4).

♦ MCL 769.4a, Spouse Abuse Act

Insert the following language after the third paragraph on page 62:

- Effective January 1, 2005, 2004 PA 220 makes participation in a drug treatment court a term or condition that may be imposed on a defendant in deferral under MCL 769.4a. MCL 769.4a(3).

♦ MCL 762.11, Holmes Youthful Trainee Act

Insert the following language after the second paragraph on page 63:

- Effective January 1, 2005, 2004 PA 226 makes participation in a drug treatment court a term or condition that may be imposed on a defendant in deferral under the youthful trainee act. MCL 762.13(1)(b).

3.38 Withdrawing or Challenging a Plea

Insert the following language near the top of page 67 immediately before Section 3.39:

Plea pursuant to drug treatment court admission. Effective January 1, 2005, 2004 PA 224 authorizes circuit and district courts to institute or adopt a drug treatment court. MCL 600.1062(1). Family divisions are also authorized to institute or adopt a drug treatment court for juveniles. MCL 600.1062(2). Criteria for admission, operating requirements, and procedural information about drug treatment courts appear in a new chapter of the revised judiciary act created by 2004 PA 224. See MCL 600.1060 *et seq.*

An individual who pleads guilty to a charged offense in order to apply for admission to a drug treatment court must be permitted to withdraw his or her plea if the individual is not admitted to the program. MCL 600.1068(5).

3.40 **Appealing a Plea-Based Conviction**

Insert the following text after the quoted paragraph near the top of page 68:

The United States Supreme Court reversed the Sixth Circuit’s decision in *Tesmer v Granholm* but did not address the constitutionality of MCL 770.3a because the Court concluded that the plaintiffs lacked standing to challenge Michigan’s procedure on behalf of “hypothetical indigents.” *Kowalski v Tesmer*, 543 US ____ (2004). Consequently, the controlling rule in Michigan is that set forth in *People v Bulger*, 462 Mich 495 (2000)—Michigan’s Constitution does not require that indigent defendants be appointed counsel to pursue discretionary appeals.